

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MALIBU MEDIA, LLC,)	
)	
Plaintiff,)	Civil Case No. <u>5:19-cv-00975-NAM-ML</u>
)	
v.)	
)	
RICHARD ROSSELLO,)	
)	
Defendant.)	
)	

**MOTION FOR ENTRY OF DEFAULT JUDGMENT
AGAINST DEFENDANT RICHARD ROSSELLO**

Plaintiff, Malibu Media, LLC (“Plaintiff”), by and through undersigned counsel, and pursuant to Fed. R. Civ. P. 55, hereby files its Motion for Entry of Default Judgment (“Motion”) against Defendant, Richard Rossello (“Defendant”), and in support thereof, states:

1. This is a case for copyright infringement arising under United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 et seq. (the “Copyright Act”).
2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338 (patents, copyrights, trademarks and unfair competition).
3. Plaintiff used proven IP address geolocation technology which has consistently worked in similar cases to ensure that Defendant’s acts of copyright infringement occurred using an Internet Protocol address (“IP address”) traced to a physical address located within this District, and therefore this Court has personal jurisdiction over defendant because (i) Defendant committed the tortious conduct in this State, (ii) Defendant resides in this State, and/or (iii) Defendant has engaged in substantial and not isolated business activity in this State.

4. Indeed, Defendant resides in the State of New York at 308 1st Street, Canastota, NY 13032.

5. On August 8, 2019, Plaintiff filed its Complaint in this action. [CM/ECF 1]

6. On March 4, 2020, Plaintiff filed its Amended Complaint [CM/ECF 15]. *See Amended Complaint, attached hereto as Exhibit “A”.*

7. Service of summons and Amended Complaint was obtained as follows [CM/ECF 19].

Defendant	Date of Service, Type of Service
------------------	---

Richard Rossello	March 13, 2020, Personal Service
------------------	----------------------------------

8. New York Rules of Civil Procedure § 308 allows for personal service by delivering the summons within the state to the person to be served.

9. The Affidavit of Service [CM/ECF 19] details that the Defendant Richard Rossello was served via personal service. Thus, service is appropriate

10. Defendant has failed to plead or otherwise defend himself against Plaintiff's Amended Complaint.

11. A Clerk's Certificate of Default was issued as to Defendant Richard Rossello on May 4, 2020 [CM/ECF 21]. *See Clerk's Certificate of Default, attached hereto as Exhibit “B”.*

12. Defendant is not a minor or an otherwise incompetent person or on active duty in the U.S. Military. *See Decl. of Kevin T. Conway, Esq.*

13. This Motion is based on the allegations in Plaintiff's Amended Complaint. Defendant has admitted all of the facts alleged therein by failing to plead or otherwise respond to the Amended Complaint. *See Ryan v. Homecomings Fin. Network*, 253 F.3d 778, 780 (4th Cir. 2001) (“The defendant, by his default, admits the plaintiff's well pleaded allegations of fact, is

concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established....") (internal quotation marks and citation omitted).

14. This Motion is further based on the facts attested to in the Declaration of Kevin T. Conway, Esq. and the Memorandum of Points and Authorities in Support of Motion for Entry of Default Judgment filed contemporaneously herewith, and the record of the proceedings and papers on file herein. These materials are sufficient to justify the requested relief.

WHEREFORE, Plaintiff, Malibu Media, LLC, respectfully requests entry of a default judgment in favor of Plaintiff and against Defendant, Richard Rossello, in the form of the Proposed Default Judgment and Permanent Injunction attached hereto, and for such other and further relief this Court deems just and proper.

Dated: May 4, 2020

Respectfully submitted,

By: /s/ Kevin T. Conway
Kevin T. Conway, Esq.
NNY Bar No. 701143
80 Red Schoolhouse Road, Suite 110
Spring Valley, New York 10977
T: 845-352-0206
F: 845-352-0481
E-mail: ktcmalibu@gmail.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2020, I electronically filed the foregoing document with the Clerk of the Court and all parties using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document via U.S. Mail to the persons set forth in the Service List below.

By: /s/ Kevin T. Conway
Kevin T. Conway, Esq.
NNY Bar No. 701143

Service List

Richard Rossello
308 1st Street
Canastota, NY. 13032-1516.